

## **Consultation to Obtain Input on the New TSCA Provision to Collect Fees**

### **Transcript Summary**

**September 13, 2016**

#### **Discussion following EPA's presentation of estimated costs of work associated with TSCA Sections 4, 5, 6 and 14**

Industry expressed interest in having EPA provide more specifics about how they arrived at their cost estimates. They were particularly interested in whether EPA routinely collects any data associated with the administration of Sections 4, 5, 6, and 14, and whether this would be something that they could access. They asked: could EPA reduce its estimates to person-year or person-hour level of effort? How many hours (of EPA and contractor time) does it typically take to get to a PMN decision? Does EPA track this time and effort, and if so, did this tracking go into their cost estimates? Has EPA done a breakdown of how much individual types of PMNs cost relative to each other? They were interested in extracting more of this information, and implied that detailed answers to these questions seemed necessary to creating a fee structure.

Industry also requested information about the five final risk evaluations EPA has done so far, including the cost of each evaluation that EPA used to calculate the average cost, in order to get a better sense of cost variation. They also wondered if the Agency had found, or anticipated, a large variation in cost for data-rich chemicals versus data-poor chemicals or for difficult-to-assess chemicals versus easy-to-assess chemicals.

Finally, industry discussed Section 6 prioritization, and whether costs would be factored in for chemicals that start the prioritization process but eventually drop off. They asked if the effort associated with starting to review a chemical that is eventually deemed low priority would be incorporated into the fees rule. There was a request for EPA to come up with a cost estimate for the Section 6 prioritization process on its own.

#### **Small Business Discussion**

Industry raised a few questions about how a small business is (and will continue to be) defined under TSCA fees. They asked whether a small business, currently defined by total annual sales, had any caveat related to the total volume of production. They asked if EPA had considered other criteria such as production volume or number of employees. A few industry stakeholders proposed an employee-based standard as more appropriate for a small business definition, with the reasoning that revenue does not always equal profit. They noted that SBA uses number of employees in their small business definition, and recommended that it at least be a factor to consider in the Agency's consultation with SBA.

Industry was interested in understanding how much revenue PMN fees from small businesses currently raise and what proportion of the total PMN fees that amount constitutes. Some concern was expressed about the large factor of difference in fees assessed between a small business and a non-small business. While there was support for a differential fee to address small business interests, there was a concern about how to make the fee structure more equitable while still recognizing the significant Agency effort

that goes into reviewing PMNs. Furthermore, some expressed interest in how EPA would plan to go about verifying actual sales volumes or whether this would always be self-reported.

### **Industry proposals for reaching 25% or \$25M**

Industry did not present a specific proposal on how to reach 25% or \$25M, but did have a robust discussion about many aspects of the fees system.

One proposal was to base fees for different TSCA sections on the level of effort each requires. Industry seemed to agree that Section 4 would be relatively minor, but they wondered what the rough split would be between Section 5 and Section 6 activities. They proposed at least partially establishing the fees at a level that reflects the work that is going into them, while also voicing concerns over any elevation of Section 5 fees, primarily because this could create an active disincentive for bringing new PMNs forward and a barrier to innovation.

Industry seemed to agree that it might be possible to come up with a generic approach or standard fee for Section 5, but that under Section 6, the amount of work required by EPA could be widely variable, and a total upfront fee might not make sense. For this reason, they proposed assessing Section 6 fees after-the-fact. Industry recognized the challenge associated with developing these fees; they did not expect a great amount of certainty on EPA's part for the first few years but requested that EPA try to at least capture a range of expected costs. In addition, it was proposed that EPA not charge any fees at all for Section 4, due to the high level of effort and costs already associated with developing data under Section 4.

Industry emphasized that in developing the proposed rule, EPA should not establish a specific level to be raised by the fees, and should use a phased approach. They noted that under the amended law, Section 26(b)(4)(F) provides EPA the ability to review any established fees on the basis of experience and restructure if necessary to appropriately account for the level of effort, number of submissions, etc. One suggestion was to phase in a fee structure over three years rather than trying to determine upfront what costs would need to be assessed over the next three years. Since EPA will not be able to conduct a full 20 evaluations in 2018, and will have to ramp up to 20 over the first few years, it made sense to industry that the fee structure could work in parallel to this ramp up, recognizing a lower level of productivity at the beginning. There was also a suggestion to consider the legal argument that risk evaluation should not be considered as part of a 25 percent cap, per language in Section 26(b)(4).

Industry concluded this part of the discussion by stressing the importance of transparency in the process of developing the proposed rule. They requested that the Agency provide as much detail as possible to back up their cost estimates. To this end, they made the point that industry will be more willing to accept a plan where they can understand where the estimated costs are coming from and track what the fees will be used toward. They expressed appreciation for EPA's transparency in the process so far and willingness to meet and have open discussions.

## Industry proposal for fee payer distribution

There was general consensus among industry participants that manufacturers and processors should in most instances be able to resolve the appropriate allocation of fees amongst themselves without the need for Agency intervention. EPA would reach out to the group of manufacturers, importers and processors of a substance, indicate that a risk evaluation under Section 6(b) is planned and has an associated fee, and a consortium would come together and voluntarily reach a fair arrangement on allocating the fee amongst its members. Since many manufacturers may also be processors, it would be more useful to have these groups talking to each other first, rather than the Agency setting an artificial distinction between manufacturers and processors. They encouraged EPA to use their ability to allow processors to engage the processing community in the inventory reset process, while keeping processor reporting voluntary, not mandatory. One commenter suggested that EPA could let manufacturers determine the active list of chemicals in commerce, then processors could review and comment on the list. An industry-led process would decrease the burden on processors, and in turn, the Agency.

Industry suggested that EPA reach out to manufacturers and processors in a manner similar to the “orphan” test rules, whereby there is a notice, everyone is aware of the upcoming test rule, a consortium is formed and everyone agrees to reimburse. In the case of CBI, a company would contact the Agency directly and be able to send a third-party to participate in the consortium, in order to remain confidential.

## Next Steps

Industry asked EPA to consider providing a generous amount of time to submit comments when the proposed rule is released, due to the wide-ranging impact of the rule. They also suggested EPA consider engaging stakeholders on the rule before sending it to OMB.